

REMARKS/ARGUMENTS

The Office Action mailed December 17, 2003 has been carefully reviewed. Reconsideration of this application in view of the enclosed Declarations and the following remarks is respectfully requested. The claims presented for examination are: claims 1-18. The Office Action mailed December 17, 2003 is non-final.

35 USC 102 Rejection

In numbered paragraph 4 of the Office Action mailed December 17, 2003, claims 1, 7, and 9-11 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by the Davies Reference (U. S. Patent No. 6,375,697).

35 USC 103 Rejection Davies in view of Groger et al

In numbered paragraph 7 of the Office Action mailed December 17, 2003 claims 2, 3, 5, and 6, 8, 12, 13, and 15 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over the Davies Reference in view of the Groger et al Reference (U. S. Patent No. 5,766,956).

35 USC 103 Rejection Davies in view of Anbar

In numbered paragraph 8 of the Office Action mailed December 17, 2003 claims 4 and 14 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over the Davies Reference in view of the Anbar Reference (U. S. Patent No. 4,022,876).

Declarations That Overcome The Cited Davies U. S. Patent No. 6,375,697

The Cited Davies U. S. Patent No. 6,375,697 issued April 23, 2002 from a patent application filed September 2, 1999 and is based upon a provisional patent application that was filed on July 29, 1999. The earliest date of the Cited Davies U. S. Patent No. 6,375,697 is therefore July 29, 1999.

Previous Declarations filed in the subject application were accepted as establishing that the inventor in the subject application, Raymond P. Mariella, Jr., made the invention described and claimed in the subject patent application in this country prior to September 3, 1999.

July 29, 1999 is only 1 Month and 6 Days prior to the September 3, 1999 date established by the previous Declarations.

Supplemental Declarations by Raymond P. Mariella, Jr. and Eddie E. Scott are enclosed that supplement the previous Declarations and established that the inventor in the subject application, Raymond P. Mariella, Jr., made the invention described and claimed in the subject patent application in this country prior to the July 29, 1999.

The Supplemental Declarations show that Raymond P. Mariella, Jr. completed a "RECORD OF INVENTION" describing The Invention in this country prior to July 29, 1999. Photostatic copies of the "RECORD OF INVENTION" are attachment SA to The Supplemental Declarations by Raymond P. Mariella, Jr. and attachment SA to The Supplemental Declarations by Eddie E. Scott. The dates on the "RECORD OF INVENTION" attachments are blacked out; however, as stated in the Declarations the blocked out dates are prior to July 29, 1999. In particular the blocked out date at the top of page 1 in the area "RECEIVED - LLNL PATENT GROUP" is prior to July 29, 1999; the blocked out dates on page 2 in the section "V. Documents Describing the Invention" are prior to July 29, 1999; the blocked out date on page 2 in the section "VII. Background" is prior to July 29, 1999; the blocked out dates on page 4 in the section "X. Documents Describing the Invention" are prior to July 29, 1999; the blocked out date on page 4 in the section "VII. Conception of the Invention" is prior to July 29, 1999; the blocked out date on page 5 in the section "XIV." is prior to July 29,

1999; and the blocked out date on page 5 in the section "XV. Classification Review" is prior to July 29, 1999;

The documents attached to the Declarations (The Documents) have been maintained in the ordinary course of business of the University of California, the Lawrence Livermore National Laboratory, and the United States Department of Energy (DOE). The Documents have the dates blacked out as provided for in MPEP § 715.07 Facts and Documentary Evidence - ESTABLISHMENT OF DATES, provides, "If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration." When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.

It is believed that the procedure of blacking out the dates is desirable to protect the Applicant's rights because the actual dates may become important in later proceedings and it would be detrimental to disclose exactly how early are Raymond P. Mariella, Jr.'s dates.

The attached Declarations and the documents attached to the Declarations show that the inventor Raymond P. Mariella, Jr. made the claimed invention before July 29, 1999 which is the earliest effective date of the Davies Reference. Applicant submits that the foregoing is sufficient to establish that The Inventor, Raymond P. Mariella, Jr., made the invention described and claimed in the subject patent application in this country prior to the July 29, 1999 provisional filing date of the Davies Reference.

The Supplemental Declarations show that Raymond P. Mariella, Jr. actually reduced the invention to practice before the July 29, 1999 provisional filing date of the Davies Reference.

As an alternative argument, it is Applicant's position that The Supplemental Declarations show that Raymond P. Mariella, Jr. continuously worked on testing, developing, and patenting from July 29, 1999 until September 14, 2000 when the subject application was filed.

Applicant submits that the Davies Reference is not a valid reference against the claims in the subject application.

Since the Davies Reference can not be used as a reference against the claims of the subject application, the combination of the Davies Reference and the other references can not be used to render the claimed invention unpatentable. Thus, the combination of references fails to support a rejection of the claims under 35 USC 103(a), and the rejection should be withdrawn and the claims now present in the application allowed.

SUMMARY

The undersigned respectfully submits that in view of the foregoing Declarations and remarks the rejections of claims raised in the Office Action dated December 17, 2003 have been fully addressed and overcome. The present application is now believed to be in condition for allowance. It is respectfully requested that this application be reconsidered, that the claims be allowed, and that this case be passed to issue. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the Examiner is invited to call the undersigned attorney at (925) 424-6897.

Respectfully submitted,



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Dated: March 2, 2004